

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-209753

DATE: December 01, 1982

MATTER OF: Polaroid Corporation

DIGEST:

Protest filed with GAO on date for receipt of proposals but more than 10 working days after protester learns of agency's denial of protester's pre-closing date protest to agency is untimely under GAO Bid Protest Procedures, 4 C.F.R. § 21.2(a).

Polaroid Corporation protests that the General Services Administration (GSA) has improperly set aside for small business a special item number for self-processing identification cameras under solicitation No. GSA-3YC-N-020. Polaroid previously protested to the contracting officer, contending such a set-aside was against the best interest of the Government because it unduly restricted competition. The contracting officer denied the protest in a letter dated October 6, 1982 and the closing date for receipt of proposals was extended to November 5, 1982. Polaroid's subsequent protest to our Office was received at 2:18 p.m. on November 5. For the reasons discussed below, this protest is dismissed as untimely.

Although the protest was filed here presumably before the closing time on November 5, it was also filed here well after the contracting officer denied the protest filed with him. Paragraph (a) of section 21.2 of our Bid Protest Procedures, 4 C.F.R. Part 21 (1982), requires that when a protest has been filed initially with the contracting agency, any subsequent protest to our Office must be filed within 10 working days of formal notification or actual or constructive notice of initial adverse action by the agency on the protest. While paragraph (b) of section 21.2 provides that a protest based on alleged improprieties in a solicitation which are apparent prior to the closing date for receipt of initial proposals must be filed prior to the closing date for receipt of proposals, we have held that where a protest of a solicitation defect has been filed with the procuring agency,

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paragraph (a) is controlling. See Informatics, Inc., 58 Comp. Gen. 750 (1979), 79-2 CPD 159. Since Polaroid's protest to our Office on the closing date for receipt of proposals was not filed within the time provided by section 21.2(a), it is untimely and will not be considered on its merits.

Harry R. Van Cleve
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Acting General Counsel